



**Ninety-Ninth Legislature - First Session - 2005**  
**Revised Committee Statement**  
**LB 677**

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**Hearing Date:** February 16, 2005

**Committee On:** Judiciary

**Introducer(s):** (Dw. Pedersen)

**Title:** Provide for administrative segregation in correctional facilities

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**Roll Call Vote – Final Committee Action:**

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

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**Vote Results:**

7	Yes	Senators Aguilar, Bourne, Combs, Flood, Foley, Friend, Pedersen
	No	
	Present, not voting	
1	Absent	Senator Chambers

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**Proponents:**

Senator Dwite Pedersen  
Tim Butz  
Marshall Lux  
Duane Sanders  
James Davis  
George Johnston

**Representing:**

Introducer  
ACLU Nebraska  
Ombudsman's Office  
Friends & Family of Inmates  
Ombudsman's Office  
self

**Opponents:**

Sharon Lindgren

**Representing:**

Department of Correctional Services

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB 677 proposes to establish guidelines and procedures for placing inmates in the custody of the Department of Corrections into administrative segregation. Administrative segregation is defined in the bill as the placement of an inmate into solitary confinement or otherwise isolating an inmate from the general population of an institution. Administrative segregation does not include protective custody, involuntary segregation for the purpose of investigating misconduct by the offender, or disciplinary segregation as currently defined in statute.

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In order to place an inmate in administrative segregation, the chief executive officer of a facility must have grounds to believe beyond a reasonable doubt that:

- The offender has attempted, engaged in, or plans to engage in acts representing a serious, imminent, and continuing threat to the security of the facility, the personal safety of other inmates, or the well-being of the offender; and
- Keeping the offender in the general population would jeopardize the offender's safety;

LB 677 prohibits the use of administrative segregation unless the chief executive officer determines that no other reasonable alternatives are available. Reasonable alternatives to administrative segregation include but are not limited to the following:

- Transfer to another facility;
- Transfer of other offenders to another facility;
- Alteration of the offender's job assignment or activity schedule;
- Mediation of disputes between the offender and other inmates;
- Administration of medication if the offender is mentally ill; or
- Transfer of the offender to another state;

In determining whether or not reasonable alternatives exist to administrative segregation, the chief executive officer of the facility is required to consult with caseworkers, mental health specialists, and any other staff which would have knowledge of the offender and the circumstances surrounding the proposed administrative segregation.

LB 677 also requires the chief executive officer of a correctional facility shall develop a personalized reintegration plan for each offender placed in administrative segregation. The reintegration plan is required to include the following:

- Conditions which must be met prior to release from segregation;
- A strategy for meeting the release conditions;
- Circumstances under which provisional release from segregation may be granted;
- A strategy for limiting the ill effects of administrative segregation on the offender; and
- A timetable for reintegration the offender into the general population.

The bill also contains an absolute prohibition on the use of administrative segregation for purposes of punishment and requires that the length of any administrative segregation be considered as a mitigating factor when determining the duration of disciplinary segregation imposed on an offender. Lastly, the bill requires that offenders in administrative segregation receive the same rights and privileges as inmates in the general population with respect to the following, unless possession of certain items presents a danger to the offender or others:

- Visitation;
- Mail correspondence;
- Telephone calls;

- Possession of personal effects, clothing, bedding and sanitation materials; and
- Access to personal hygiene, canteen services, library services, and legal services;

**Explanation of amendments, if any:**

The proposed committee amendment to LB 677 incorporates three bills relating to correctional issues, LB 507, LB 572 and LB 757, as those bills were amended and advanced by the committee. LB 507 provides the ombudsman with access to presentence investigation reports, LB 572 calls for a comprehensive study of the Department of Corrections, and LB 757 prohibits deputy state sheriffs from being assigned to the Department of Corrections. The committee amendment also makes the following changes to LB 677:

LB 677

- Adds two exceptions to the definition of administrative segregation in the bill. Inmates segregated on death row and inmates segregated for medical reasons pursuant to sections 83-180 or 83-4,161.
- Changes the burden of proof required for an inmate to be placed on administrative segregation from beyond a reasonable doubt to clear and convincing evidence.
- Allows an inmate to be placed on administrative segregation if (1) the inmate has committed or planned to commit an act which is a threat to the security of the facility or the health and safety of themselves or others and (2) the inmate's continued presence in general population poses a threat to their own safety or the safety of others. As introduced, the bill did not allow the use administrative segregation if only other persons, and not the inmate, are placed at risk by the inmate's continued presence in the general population.
- Increases from seventy-two to ninety-six hours the amount of time an inmate can be placed on administrative segregation before a personalized reintegration plan must be developed.

LB 507

LB 507 proposes to provide all criminal defendants the opportunity to review the presentence investigation report prepared by the office of probation administration and to submit additional information for the court's consideration prior to being sentenced for a criminal conviction. Currently, the law allows a court to permit inspection of a presentence investigation report and the submission of additional information by a defendant but does not require the court to do so. LB 507 also adds the ombudsman to the list of state agencies which may request a copy of the presentence investigation report of any inmate under the supervision of the Department of Corrections and requires the department to comply with such requests.

## LB 572

LB 572 proposes to create a legislative task force to study the Department of Correctional Services. The purpose of the task force is to examine the mission, structure, programming and staffing of the Department of Corrections and to make recommendations for any necessary changes.

The task force shall consist of the following 13 members:

- Director of Corrections
- Executive director of the Crime Commission
- Chairperson of the Community Corrections Council
- Parole administrator
- Chairperson of the Parole Board
- Ombudsman
- 2 members of the legislature
- 2 Department of Corrections (DOC) employees
- 2 former inmates working in post-release programs
- 2 members of the public

The executive board of the legislature shall appoint the members representing the legislature, Department of Corrections employees, former inmates, and members of the public, as well as select a member to serve as the chairperson of the task force.

In conducting the study required by LB 572, the task force shall examine the following:

- The current structure and mission of the department;
- Growth and viability of the mission-related duties of the department;
- Utilization, effectiveness and cost of inmate programming and treatment services;
- The growth in the department's budget over the past 10 years;
- Cost per offender compared to other states;
- Accreditation of departmental institutions; and
- Mental health, substance abuse, vocational, and educational programs used in other jurisdictions.

The task force is directed to issue a preliminary report by December 15, 2005 and a final report to the Governor and Legislature by March 1, 2006.

The committee amendment to LB 572 adds the ombudsman to the task force and makes changes to the dates in the bill setting the deadline for appointing members to the task force, the sunset provision and the due date of the final report. The deadline for appointing members is moved from June 15, 2005 to August 1, 2005 to allow more time to select potential members. The due date for the final report and sunset clause for the task force is moved from March 1, 2006 to December 1, 2006 to allow an additional 8 months to complete the task force's research and final report.

## LB 757

LB 757 proposes to limit the authority of the Governor to assign deputy state sheriffs to state agencies. Currently the governor is not limited in his ability to appoint deputy state sheriffs and assign them to state offices, commissions, departments or other agencies.

The bill requires that all deputy state sheriffs shall serve under the direct supervision of the Superintendent of the State Patrol, except that deputy sheriffs may be assigned to and supervised by the following agencies:

- Department of Agriculture
- Attorney General
- Nebraska Brand Committee
- State Fire Marshall

The committee amendment to LB 757 replaces the green copy of the bill and prohibits deputy state sheriffs from being assigned to the Department of Corrections. This approach is preferable as it avoids the need to list all agencies which have a legitimate need for Deputy State Sheriffs, and limits the bill to its intended consequence of prohibiting deputy state sheriffs from being assigned to the Department of Corrections.

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**Senator Patrick J. Bourne, Chairperson**